

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANIEL FOWLER,

Plaintiff,

v.

SAN JUAN COUNTY et al.,

Defendants.

CASE NO. C19-0208-JCC

ORDER

This matter comes before the Court on Defendants' motion for summary judgment (Dkt. No. 17). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS in part and DENIES in part the motion for the reasons explained herein.

**I. BACKGROUND**

Plaintiff Daniel Fowler's relationship with Holly Dennis, his girlfriend, was turbulent at times and resulted in several contacts with San Juan County law enforcement officers. (*See* Dkt. No. 22 at 1.) On November 25, 2014, after Dennis broke up with Plaintiff, Defendant Deputy Sheriff Raymond Harvey responded to a pair of 911 calls in which Dennis first requested a welfare check of Plaintiff and then reported that Plaintiff refused to release Dennis's vehicle from his automotive shop. (Dkt. No. 19 at 2, 29.) On August 14, 2015, after Dennis asked Plaintiff to move out of her home, she called 911 to report Plaintiff was behaving in an enraged

1 manner towards her; she later reported he had vandalized her property. (*Id.* at 3.) Defendant  
2 Harvey investigated Dennis's reports and arrested Plaintiff for domestic violence malicious  
3 mischief. (*Id.* at 3–4.) Plaintiff was charged, and the San Juan County District Court entered a  
4 domestic violence protection order, which prohibited Plaintiff from having contact with Dennis.  
5 (*Id.* at 4.) On August 27, 2015, Dennis secured a second protection order from the Superior Court  
6 of Washington for San Juan. (Dkt. No. 22 at 1, 8.)

7 On December 21, 2015, Dennis obtained a modification to the superior court's protection  
8 order that terminated the no-contact provision. (*Id.* at 1, 15.) On February 24, 2016, the district  
9 court terminated its protection order. (*Id.* at 21.) The Sheriff's Office is routinely provided with  
10 copies of protection orders from the San Juan County District and Washington Superior Courts.  
11 (Dkt. No. 19 at 4.)

12 On March 1, 2016, Defendant Harvey saw Plaintiff and Dennis sitting together in  
13 Dennis's parked vehicle. (*Id.*) Defendant Harvey was aware that the district court had entered a  
14 protection order; he called the San Juan County Sheriff's Office dispatch and was erroneously  
15 told the protection order was still in place. (*Id.*) He ordered Plaintiff and Dennis to separate. (*Id.*)  
16 Plaintiff was adamant that the district court's protection order had been quashed and showed  
17 Defendant Harvey a copy of the order terminating the district court's protection order, but  
18 Plaintiff nevertheless complied. (*Id.* at 4–5.) On March 4, the next day that Defendant Harvey  
19 reported to work, he called dispatch again to clarify the status of the district court's protection  
20 order. (*Id.*) This time, dispatch told him that the district court's protection order had indeed been  
21 terminated but the superior court's protection order was still in place and prohibited Plaintiff  
22 from contact with Dennis. (*Id.* at 5.) Defendant Harvey called Plaintiff and left a voice message  
23 to this effect. (Dkt. No. 22 at 3.) The next day, Plaintiff left a voice message for Defendant  
24 Harvey stating that the superior court's protection order had also been quashed. (*Id.*)

25 On March 7, Defendant Harvey responded to Dawn Atkinson's report of the presence of  
26 Plaintiff as an unwanted person on a third party's property. (Dkt. No. 19 at 5.) When Defendant

1 Harvey arrived at the address, Atkinson told him that Plaintiff had been there with Dennis but  
2 had left and likely returned to his house. (*Id.* at 5–6.) Defendant Harvey called dispatch and was  
3 once again told that the superior court’s protection order was in place. (*Id.* at 6). Defendant  
4 Harvey, along with Deputy Sheriff David Holland, went to Plaintiff’s residence, knocked on the  
5 door, and spoke to Plaintiff. (*Id.* at 58.) The parties disagree over where the conversation took  
6 place. While Plaintiff maintains that he stood calmly just inside the threshold of his house with  
7 the door open, Defendant Harvey states that Plaintiff came out on the porch and was in an  
8 agitated state. (*See* Dkt. Nos. 19 at 6, 58; 22 at 4.) Defendant Harvey questioned Plaintiff about  
9 Atkinson’s report. (Dkt. No. 19 at 58.) Next, Defendant Harvey questioned Plaintiff about his  
10 contact with Dennis and informed him that the superior court’s protection order still prohibited  
11 him from contact with Dennis. (*Id.*) Plaintiff insisted that the order was no longer in effect. (*Id.*)

12 What happened next is also in dispute. Defendant Harvey maintains he attempted to place  
13 Plaintiff under arrest for violation of the superior court’s protection order and advised Plaintiff to  
14 turn around and place his hands behind his back. (*Id.*) Defendant Harvey states that Plaintiff  
15 walked from the porch back into the house and continued resisting after Defendant Harvey and  
16 the other officer grabbed him and began applying handcuffs. (*Id.*) Defendants note that  
17 Defendant Harvey was aware of at least three previous incidents in which Plaintiff had been  
18 charged or convicted of assault, including one in which Defendant Harvey was the responding  
19 officer. (*Id.* at 2 and 11.) Defendant Harvey also maintains he did not know whether Dennis was  
20 present and was concerned that she could be in danger of harm from Plaintiff. (*Id.* at 6.)

21 Plaintiff maintains that when Defendant Harvey advised him that he had violated the  
22 superior court’s protection order, Plaintiff remained calm, stated that he would retrieve the court  
23 order showing the modification, and turned to go to his bedroom. (Dkt. No. 22 at 4.) Plaintiff  
24 states that as he turned to look for the paperwork, Defendant Harvey unexpectedly slammed into  
25 him from behind, shoved him into a wall, brought him to the floor, pulled his left arm, and  
26 shoved it up towards his shoulder blade. (*Id.* at 4.) Plaintiff says he felt a pop and felt something

1 break in his shoulder. (*Id.* at 4–5, 26.) Plaintiff maintains that he was never given a warning or  
2 informed he was under arrest. (*Id.* at 4.) Plaintiff’s daughter was present and corroborates his  
3 account. (*See* Dkt. No. 23.)

4 Defendants do not dispute that when Defendant Harvey and the other officer restrained  
5 Plaintiff, they grabbed Plaintiff by the arms, pushed him into a corner, damaging his glasses,  
6 forced him face down onto the floor, and twisted his left arm behind his back. (*See* Dkt. No. 21  
7 at 8; 22 at 4; 25.) Plaintiff states that after cuffing him, Defendant Harvey pulled up on the cuffs  
8 again and caused Plaintiff more pain. (Dkt. No. 22 at 5.)

9 Defendant Harvey took Plaintiff to the sub-station to process him for booking (Dkt. No.  
10 19 at 59.) Defendant Harvey asked dispatch to fax the superior court’s protection order (*Id.*)  
11 Dispatch informed him that when they pulled the order from the filing drawer, they found an  
12 amendment stapled to the back that eliminated the no-contact provision. (*Id.*) The amendment to  
13 the protection order had not been logged in the dispatch computer system. (*Id.*) Defendant  
14 Harvey contacted Defendant Sheriff Ronald Krebs, who agreed that Plaintiff should be released.  
15 (*Id.*) Defendant Harvey apologized for the miscommunication and released Plaintiff. (*Id.*)

16 Plaintiff has had persistent pain following his arrest. (Dkt. No. 22 at 5.) Plaintiff states  
17 that his shoulder was seriously injured and required extensive surgery. (*Id.* at 5–6.) Plaintiff’s  
18 shoulder condition has caused him financial hardship because it has impaired his ability to work  
19 as a mechanic, drive heavy equipment, or work with firewood. (*Id.* at 6.) Defendants dispute the  
20 extent of Plaintiff’s shoulder injury and point to evidence showing that he had a preexisting  
21 degenerative joint condition that may have required surgery even without an injury. (Dkt. No. 26  
22 at 4, 6.) Defendants also point to Defendant Harvey’s arrest report, which states that Plaintiff  
23 said his left shoulder hurt because of a preexisting condition. (Dkt. No. 19 at 59.)

24 Plaintiff brings the following causes of action against Defendants: (1) arrest without  
25 probable cause in violation of 42 U.S.C. § 1983; (2) excessive use of force in violation of 42  
26 U.S.C. § 1983; (3) municipal liability for violations of Plaintiff’s Fourth Amendment rights in

violation of 42 U.S.C. § 1983; (4) negligence; (5) outrage; and (6) trespass.<sup>1</sup> (Dkt. No. 7 at 15–19.) Defendants move for summary judgment dismissing all of Plaintiff’s claims. (Dkt. No. 17.)

## **II. DISCUSSION**

### **A. Summary Judgment Standard**

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In making such a determination, the Court must view the facts and justifiable inferences to be drawn therefrom in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Once a motion for summary judgment is properly made and supported, the opposing party “must come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). Material facts are those that may affect the outcome of the case, and a dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party. *Anderson*, 477 U.S. at 248–49. Conclusory, non-specific statements in affidavits are not sufficient, and “missing facts” will not be “presumed.” *Lujan v. National Wildlife Fed’n*, 497 U.S. 871, 888–89 (1990). Ultimately, summary judgment is appropriate against a party who “fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catlett*, 477 U.S. 317, 324 (1986).

### **B. Defendant Harvey**

To state a § 1983 claim, a plaintiff must allege “(1) a violation of rights protected by the Constitution or created by federal statute, (2) proximately caused (3) by conduct of a ‘person’ (4) acting under color of state law.” *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

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<sup>1</sup> Plaintiff concedes that his state law claims for assault, battery, and false imprisonment are time-barred pursuant to Wash. Rev. Code § 4.16.100(1). (See Dkt. No. 21 at 23.)

1 A warrantless arrest, which constitutes a “seizure,” is “unreasonable” and thus  
2 unconstitutional if it is not supported by probable cause—*i.e.*, if “the facts and circumstances  
3 within [the arresting officer’s] knowledge are [not] sufficient for a reasonably prudent person to  
4 believe that the suspect has committed a crime.” *Rosenbaum v. Washoe Cty.*, 663 F.3d 1071,  
5 1076 (9th Cir. 2011). Thus, to prevail on a § 1983 claim for false arrest, a plaintiff must  
6 demonstrate that, based on the facts known to the officer at the time of the arrest, there was no  
7 probable cause to arrest him. *Norse v. City of Santa Cruz*, 629 F.3d 966, 978 (9th Cir. 2010).  
8 “Protection orders, like warrants, are not stamped from a single template.” *Beier v. City of*  
9 *Lewiston*, 354 F.3d 1058, 1069 (9th Cir. 2004). “Law enforcement officers who act to  
10 enforce . . . a protection order therefore have a responsibility to familiarize themselves with the  
11 order’s precise contents through some official source.” *Id.*

12 1. Probable Cause and Wrongful Arrest

13 Plaintiff alleges his arrest violated his Fourth Amendment right to be free from  
14 unreasonable seizure because Defendant Harvey lacked probable cause to arrest him for violation  
15 of the superior court’s protection order. (Dkt. No. 21). Construing the facts in the light most  
16 favorable to Plaintiff, Defendant Harvey was aware of the following facts: (1) Defendant Harvey  
17 had arrested Plaintiff for domestic violence malicious mischief against Dennis in August 2015;  
18 (2) the district court had entered a protection order prohibiting Plaintiff’s contact with Dennis;  
19 (3) on March 4, dispatch admitted to Defendant Harvey that they had made an error when they  
20 told him the district court’s protection order was still in place; (4) also on March 4, dispatch  
21 stated to Defendant Harvey that the superior court’s protection order was still in place; (5) on  
22 March 5, Plaintiff left a voicemail for Defendant Harvey stating that the superior court’s  
23 protection order was likewise no longer in effect; (6) on March 7, Atkinson informed Defendant  
24 Harvey that she had seen Plaintiff with Dennis; (7) also on March 7, dispatch reiterated that the  
25 superior court’s protection order was still in effect; (8) when Defendant Harvey arrived at  
26 Plaintiff’s house and spoke to him, Plaintiff did not deny his contact with Dennis but stated that

1 the superior court's protection order no longer prohibited Plaintiff's contact with Dennis. (*See*  
2 Dkt. No. 10 at 3-6, 51–52.)

3 Based on the facts available to Defendant Harvey, there was sufficient basis for a prudent  
4 officer to reasonably believe that probable cause existed to arrest Plaintiff for violation of the  
5 superior court's protection order. Defendant Harvey made multiple attempts to verify the  
6 contents of the protection orders against Plaintiff through an official source, and he only decided  
7 that probable cause existed after dispatch (erroneously) confirmed that the superior court's  
8 protection order was still in place. (Dkt. No. 19 at 6, 58.) Although Defendant Harvey was faced  
9 with conflicting information from dispatch and Plaintiff, it was reasonable under the  
10 circumstances to rely on dispatch, an official source. "A police officer who does not personally  
11 read [a protection] order . . . may fulfill his duty by obtaining information from authorized  
12 personnel—such as a supervisor or police dispatcher—who have access to the terms of the  
13 order." *Beier*, 354 F.3d at 1069. Although Defendant Harvey knew dispatch had made at least  
14 one prior error, that was not enough to make it unreasonable for him to have relied on this  
15 official channel of information instead of Plaintiff's assertion. Furthermore, once Defendant  
16 Harvey believed there was probable cause to indicate Plaintiff had violated a protection order, he  
17 was required to arrest Plaintiff for this offense. *See* Wash. Rev. Code §§ 10.99.055,  
18 10.31.100(2)(a). Thus, Defendant Harvey possessed sufficient information to form an objectively  
19 reasonable belief that there was probable cause to arrest Plaintiff. Accordingly, Defendants'  
20 motion for summary judgment is GRANTED as to this claim.

21 2. Illegal Entry

22 Plaintiff also claims his arrest was illegal because Defendant Harvey entered his home  
23 without a warrant. (Dkt. 21 at 10–11.) While a warrantless arrest in a public place does not  
24 violate the Fourth Amendment, such an arrest made inside an individual's home is presumptively  
25 unreasonable, absent exigent circumstances. *Payton v. New York*, 445 U.S. 573, 590 (1980). On  
26 the other hand, if a suspect freely opens his door to police, he "voluntarily expose[s] himself to

warrantless arrest,” regardless of whether he stands inside or outside the threshold of his home. *United States v. Vaneaton*, 49 F.3d 1423, 1426 (9th Cir. 1995) (quoting *United States v. Johnson*, 626 F.2d 753, 757 (9th Cir. 1980)).

The parties dispute whether Defendant Harvey arrested Plaintiff on his porch or inside his home. (*See* Dkt. Nos. 17 at 9; 21 at 10.) But even if Plaintiff had remained inside the threshold of his home throughout the encounter, his Fourth Amendment rights were not violated because he voluntarily opened the door of his dwelling in response to a noncoercive knock by the police. *See Vaneaton*, 49 F.3d at 1426. Thus, Defendants’ motion for summary judgment is GRANTED as to this claim.

### 3. Excessive Use of Force

In determining whether a police officer’s use of force is unreasonable, the Court balances “the nature and quality of the intrusion on the individual’s Fourth Amendment interests” against the governmental interests at stake. *Graham v. Connor*, 490 U.S. 386, 396 (1989) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)). The surrounding circumstances must be judged objectively from the perspective of a reasonable officer on the scene. *Deorle v. Rutherford*, 272 F.3d 1272, 1279 (9th Cir. 2001). To evaluate the governmental interest, the Court looks to the “severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396. Because the balancing of these factors “nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom . . . summary judgment [] in excessive force cases should be granted sparingly.” *Coles v. Eagle*, 704 F.3d 624, 628 (9th Cir. 2012) (quoting *Santos v. Gates*, 287 F.3d 846, 853 (9th Cir. 2002)).

Drawing all reasonable inferences in favor of Plaintiff, this Court concludes that a reasonable jury could find that Defendant Harvey applied excessive force. The degree of intrusion on Plaintiff’s interests was significant. *See Graham*, 490 U.S. at 396. Defendant Harvey and Deputy Sheriff Holland grabbed Plaintiff, shoved him forcefully into the wall, slammed him



1 to the floor, and wrenched his arm until something broke or popped in his left shoulder. (Dkt.  
2 Nos. 22 at 4; 23 at 2–3.) This intrusion must be balanced against the governmental interest under  
3 the three *Graham* factors. *See Graham*, 490 U.S. at 396. First, Plaintiff was suspected of  
4 violating a domestic violence protection order, a misdemeanor crime, but one that requires arrest.  
5 (Dkt. No. 19 at 6.) Second, Defendants argue that Plaintiff was potentially a danger to the  
6 arresting officers or others because of his prior history of assaults and the possibility that Dennis  
7 was present and in danger. (Dkt. No. 17 at 14.) These two safety considerations, however, must  
8 be balanced against the fact that Plaintiff was unarmed and calm, he had been previously  
9 compliant in his interactions with Defendant Harvey, and Dennis was nowhere to be seen. (*See*  
10 Dkt. Nos. 19 at 4–5; 22 at 4.) Third, Plaintiff has submitted evidence that that he calmly told the  
11 officers he was going to retrieve his paperwork, then turned toward his bedroom, before the  
12 officers forcibly restrained him. (*See* Dkt. No. 22 at 4.) The appropriateness of the force  
13 Defendant Harvey used hinges on disputed questions of fact, including: (1) whether Plaintiff was  
14 agitated; (2) whether Plaintiff had already been placed under arrest and ordered to place his  
15 hands behind his back; (3) whether Plaintiff “fled” or merely stepped inside his home; (4)  
16 whether Plaintiff resisted the officers; and, crucially, (5) what degree of force Defendant Harvey  
17 applied to Plaintiff. On balance, a reasonable jury could conclude that Defendant Harvey’s use of  
18 force was excessive to restrain a calm, unarmed individual suspected of violating a protection  
19 order where the officer had not yet placed the suspect under arrest and where the subject of the  
20 protection order was nowhere to be seen. *See Graham*, 490 U.S. at 396. Accordingly,  
21 Defendants’ motion for summary judgment is DENIED as to this claim.<sup>2</sup> Because material facts  
22 are in dispute as to the reasonableness of Defendant Harvey’s use of force, Defendants’ motion  
23 for summary judgment on the basis of qualified immunity is likewise DENIED.

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24 <sup>2</sup> Defendants argue that qualified immunity should protect Defendant Harvey from liability  
25 for the excessive use of force claim. (Dkt. 17 at 15.) Because material facts remain in dispute,  
26 including what degree of force Defendant Harvey used, Defendants have not established that  
Defendant Harvey is entitled qualified immunity.

1           **C.     Municipal Liability**

2           To state a claim against a municipal entity for a constitutional violation, “[a]  
3 plaintiff . . . must go beyond the *respondeat superior* theory of liability and demonstrate that the  
4 alleged constitutional deprivation was the product of a policy or custom of the local  
5 governmental unit.” *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 793 (9th Cir. 2016). “The  
6 [Supreme] Court has further required that the plaintiff demonstrate that the policy or custom of a  
7 municipality ‘reflects deliberate indifference to the constitutional rights of its inhabitants.’”  
8 *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1060 (quoting *City of Canton v. Harris*, 489 U.S.  
9 378, 392 (1989)).

10          Plaintiff alleges that Defendant San Juan County violated his Fourth Amendment rights  
11 by promulgating policies and customs or ratifying actual practices that caused Plaintiff’s  
12 wrongful arrest and Defendant Harvey’s excessive use of force. (Dkt. No. 7 at 15–16, 19–20.)  
13 Plaintiff also alleges Defendant San Juan County failed to properly train its officers on probable  
14 cause and use of force with such deliberate indifference that it violated Plaintiff’s constitutional  
15 rights. (*Id.* at 19.) Plaintiff’s claims against Sheriff Krebs<sup>3</sup> are functionally equivalent to  
16 Plaintiff’s claim against San Juan County, the entity of which he is a part, so the Court will  
17 consider these claims together. *See Hafer v. Melo*, 502 U.S. 21, 25 (1997); *Holley v. Cal. Dep’t*  
18 *of Corr.*, 599 F.3d 1108, 1111 (9th Cir. 2010).

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21          <sup>3</sup> To state a § 1983 claim, a plaintiff must allege facts showing how any individually-named  
22 defendants caused or personally participated in causing the constitutional or statutory violations  
23 alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). Although  
24 Plaintiff states that Defendant Krebs is being sued in his individual capacity, Plaintiff has  
25 provided no evidence of Defendant Krebs’s direct participation in Plaintiff’s arrest or in the use  
26 of force against Plaintiff. (*See* Dkt. No. 7 at 3; *see generally* Dkt. No. 21.) Nor has Plaintiff  
opposed summary judgment on this claim. (*See* Dkt. No. 21 at 21–22.) The only theory of  
liability Plaintiff pursues against Defendant Krebs is a *Monell* municipal liability claim. (*Id.*)  
Accordingly, Defendant’s motion for summary judgment is GRANTED as to claims against  
Defendant Krebs in his individual capacity.

1                   1.       Probable Cause and Wrongful Arrest

2           Plaintiff does not point to evidence in the record that shows Defendants failed to properly  
3 train officers on matters of probable cause or ratified unconstitutional acts by Defendant Harvey.  
4 (*See generally* Dkt. Nos. 7, 21.) Indeed, Plaintiff does not pursue this claim in his response. (*See*  
5 Dkt. No. 21.) Furthermore, because Defendant Harvey had probable cause to arrest Plaintiff,  
6 Plaintiff's Fourth Amendment rights were not violated. (*See supra* Section II.B). Accordingly,  
7 Defendants' motion for summary judgment is GRANTED as to this claim.

8                   2.       Excessive Use of Force

9           Plaintiff does not point to evidence in the record that shows Defendants failed to properly  
10 train officers on procedures for arrest and use of force. (*See generally* Dkt. Nos. 7, 21.) Nor does  
11 Plaintiff offer evidence to show that Defendants ratified and approved Defendant Harvey's use  
12 of force. (*Id.*) Indeed, Plaintiff does not pursue this claim in his response. (*See* Dkt. No. 21.)  
13 Accordingly, Defendants' motion for summary judgment is GRANTED as to this claim.

14                  3.       Record-Keeping

15           Plaintiff asserts a theory of municipal liability based on inadequate record-keeping, which  
16 he did not raise in his complaint. (*Compare* Dkt. No. 7 with Dkt. No. 21 at 18–21.) Plaintiff  
17 offers evidence showing that San Juan County employees made multiple errors in record-keeping  
18 and relayed inaccurate information to Defendant Harvey about the protection orders. (*See* Dkt.  
19 No. 19 at 51–52.) Plaintiff also presents evidence that, approximately one year after his arrest,  
20 the San Juan County prosecutor raised serious concerns about the accuracy of reports from the  
21 San Juan County Sheriff's Office. (*See* Dkt. No. 24 at 4.) Although Plaintiff has alleged in his  
22 complaint there were errors made relaying information about the protection orders, he did not  
23 specifically plead inadequate recordkeeping as a basis for municipality liability. (*See generally*  
24 Dkt. No. 7.) Plaintiff now requests leave to amend his complaint to pursue this theory of liability.  
25 (Dkt. No. 21 at 20.)

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1 Amendments to complaints should be freely granted when justice so requires. *See*  
2 Fed. R. Civ. P. 15(a)(2). Such amendments should be granted unless they will cause the opposing  
3 party undue prejudice. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).  
4 Discovery is not scheduled to close until November 20, 2019. (*See* Dkt. No. 16.) Defendants  
5 assert that Plaintiff's request for leave to amend is improper and that it was somehow rendered  
6 moot because, in his response, Plaintiff did not pursue his original theory of municipal liability  
7 he asserted in his complaint. (*See* Dkt. No. 25 at 9.) The Court rejects these arguments. There is  
8 not evidence of "bad faith, undue delay, prejudice to the opposing party, [or] futility of  
9 amendment" that would indicate that Plaintiff's request for leave to amend is improper. *See DCD*  
10 *Programs, Ltd.*, 833 F.2d at 186. Accordingly, the Court GRANTS Plaintiff leave to amend his  
11 complaint to assert a claim for municipal liability based on inadequate record-keeping.

12 **D. State Law Claims**

13 1. Outrage

14 Plaintiff asserts that Defendant Harvey's conduct is outrageous under Washington's  
15 common law definition. (*See* Dkt. No. 21 at 23.) To state a claim for the tort of outrage under  
16 Washington law, the conduct must be sufficiently extreme to result in liability. *Dicomes v. State*,  
17 782 P.2d 1002, 1013 (Wash. 1989). "[M]ere insults and indignities, such as causing  
18 embarrassment or humiliation, will not support imposition of liability on a claim of outrage." *Id.*  
19 Rather, the conduct must be "so outrageous in character, and so extreme in degree, as to go  
20 beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in  
21 a civilized community." *Grimsby v. Samson*, 530 P.2d 291, 295 (Wash. 1975). Mere negligence,  
22 or even malice, is insufficient to support a claim of outrage. *Waller v. State*, 824 P.2d 1225, 1235  
23 (Wash. Ct. App. 1992).

24 Here, Plaintiff argues that Defendant Harvey maimed Plaintiff at home, in front of his  
25 child, without probable cause. (Dkt. No. 21 at 23.) But Defendant Harvey was present at  
26 Plaintiff's home for a legitimate law enforcement purpose: to investigate two possible crimes.

(Dkt. No. at 6, 57–58.) The information available to Defendant Harvey indicated that Plaintiff was in violation of a protection order and Defendant Harvey was therefore required to arrest him. (*See id.*); *see* Wash. Rev. Code §§ 10.99.055, 10.31.100(2)(a). At most, as discussed above, Plaintiff can show that Defendant Harvey used excessive force in slamming Plaintiff into a corner and onto the ground, conduct which falls far short of outrage under Washington law in both character and kind. *See Grimsby*, 530 P.2d at 295. Thus, Defendants’ motion for summary judgment is GRANTED as to this claim.

2. Negligence

As to his state law negligence claim, Plaintiff observes correctly that it is permissible to plead in the alternative that Defendants negligently caused harm. (*See* Dkt. No. 21 at 23.) But Plaintiff does not identify the relevant standard of care, let alone point to facts that show that Defendants violated it. (*Id.*) Accordingly, Defendants’ motion for summary judgment is GRANTED as this claim.

3. Trespass

Plaintiff’s only argument in support of his trespass claim is that Defendant Harvey’s intrusion into Plaintiff’s home was unreasonable. (*Id.*) As discussed above, Defendant Harvey did not violate Plaintiff’s Fourth Amendment rights by entering and arresting Plaintiff because Plaintiff had exposed himself to public view by answering his door. *See supra* Section II.B. Plaintiff does not point to any state law showing that these actions would constitute trespass under Washington law. Thus, Defendants’ motion for summary judgment is GRANTED as this claim.<sup>4</sup>

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<sup>4</sup> Moreover, even if Plaintiff had presented sufficient evidence to defeat summary judgment as to his negligence and trespass claims against Defendant Harvey, Defendant Harvey would be protected from liability by Washington statutory immunity based on his good faith actions in attempting to enforce the superior court’s protective order. *See* Wash. Rev. Code §§ 10.99.055, 10.31.100(2)(a).

1 Accordingly, Defendants' summary judgment is GRANTED to Defendants on all state  
2 claims.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendants' motion for summary judgment (Dkt. No. 17) is  
5 GRANTED in part and DENIED in part. Plaintiff's time-barred state law claims for assault,  
6 battery, and false imprisonment are DISMISSED with prejudice. Defendants' motion for  
7 summary judgment is GRANTED as to Plaintiff's claims for: (1) arrest without probable cause  
8 in violation of 42 U.S.C. § 1983; (2) negligence; (3) outrage; and (4) trespass. Those claims are  
9 DISMISSED with prejudice. Defendants' motion for summary judgment is GRANTED as to  
10 Plaintiff's claims for municipal liability in violation of 42 U.S.C. § 1983, but this claim is  
11 DISMISSED without prejudice and with leave to amend to assert a theory of liability premised  
12 on inadequate record-keeping. Any amended complaint must be filed within 14 days of the date  
13 this order is issued.

14 DATED this 20th day of September 2019.

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18 John C. Coughenour  
19 UNITED STATES DISTRICT JUDGE  
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